IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.MC.No. 3284 of 2007()

CC.69/2007 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA
CRIME NO.3/07 OF PATHANAMTHITTA POLICE STATION

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PETITIONER: 9TH ACCUSED:

K.C. SAJEEV,
ADVOCATE, PATHANAMTHITTA,RESIDING AT AYILYAM VEEDU (KANJIRATHINAL), PERIYARAM MURI, ELANTHOOR VILLAGE PATHANAMTHITTA.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE, PATHANAMTHITTA POLICE STATION (CRIME NO.3 OF 2007), REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. KARTHIYAYANI AMMA, AGED 59 YEARS,
W/O. KRISHNAN, JAYAPURAYIL VEETTIL,MEKKAVUNKAL, VARIYAPURAM, OANTHOOR KIZHAKKUM MURIYIL, ELANTHOOR, PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3284 of 2007

Dated this the 26th day of October 2007

O R D E R

The petitioner is the 9th accused. He, along with the co-accused, faces indictment in a prosecution for offence punishable inter alia under Section 506(ii) I.P.C. The procedure to be followed is that of trial for a warrant case on a police report. The petitioner has already entered appearance before the learned Magistrate. He has been enlarged on bail also. The petitioner is a lawyer practising at Pathanamthitta.

2. The petitioner, after appearing before the learned Magistrate, has come to this court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him. Cognizance has been taken on the basis of the final report submitted by the police, as stated earlier.

3. What is the reason? The short contention raised by the learned counsel for the petitioner is that the allegations are false and groundless. The learned counsel for the petitioner attempts to advance an argument that the allegations are improbable also. The learned counsel for the petitioner also submits that the conduct of the police showing the petitioner, a busy legal practitioner and politician as absconding is indicative of the malafides of the investigator. In

these circumstances, it is prayed that the extraordinary inherent jurisdiction may be invoked to bring to premature termination the proceedings initiated against the petitioner.

4. I have considered all the submissions made. The crux of the contention is that the allegations are groundless. The Code of Criminal Procedure does contemplate the possibility of an indictment on the basis of a police report on the basis of groundless allegations, Section 239 Cr.P.C squarely covers the issue.

5. Not that this court does not have jurisdictional competence in an appropriate and exceptional case to invoke the powers under Section 482 Cr.P.C to quash the proceedings; but that must be a really exceptional and extraordinary case to justify the invocation of the jurisdiction under Section 482 Cr.P.C. Having heard the learned counsel for the petitioner in detail and having perused the records, I am unable to find any such features in this case which would justify or warrant the invocation of the jurisdiction under Section 482 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must claim discharge under Section 239/240 Cr.P.C.

6. The learned counsel for the petitioner submits that if unnecessary insistence on personal appearance of the petitioner were insisted by the learned Magistrate, that would cause great hardship,

loss and inconvenience to the petitioner. I find no reason why the learned Magistrate should insist on such personal appearance on all dates of posting. Unless personal appearance is essential for the progress of the case, such insistence need not be made. The petitioner can be permitted to be represented by counsel on such dates. At any rate, until a decision is taken on the question of discharge/charge us239/240 Cr.P.C, the personal appearance of the petitioner need not be insisted by the learned Magistrate. Till then, certainly the petitioner can be permitted to be represented by counsel.

7. The learned counsel for the petitioner further prays for an expeditious decision on the question of charge/discharge under Section 239/240 Cr.P.C. I need only mention that I expect the learned Magistrate to take a decision on that aspect as expeditiously as possible, at any rate, within a period of two months from this date.

8. This petition is accordingly dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007